

JOINT INTERIM COMMITTEE ON HIGHER EDUCATION EXCELLENCE FUNDING
TEXAS HOUSE OF REPRESENTATIVES AND TEXAS SENATE
INTERIM REPORT 2002

A REPORT TO THE
HOUSE OF REPRESENTATIVES AND SENATE
78TH TEXAS LEGISLATURE

REPRESENTATIVE ROBERT JUNELL
CHAIRMAN

SENATOR STEVE OGDEN
CHAIRMAN



JOINT INTERIM COMMITTEE ON HIGHER EDUCATION EXCELLENCE FUNDING

November 15, 2002

The Honorable Bill Ratliff
Lieutenant Governor of Texas
P.O. Box 12068
Austin, Texas 78711-2068

The Honorable James E. "Pete" Laney
Speaker of the Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Dear Lieutenant Governor Ratliff and Speaker Laney:

The Joint Interim Committee on Higher Education Excellence Funding is pleased to submit the following interim report with recommendations for consideration by the 78th Legislature.

Respectfully submitted,

Handwritten signature of Steve Ogden in black ink, written over a horizontal line.

Steve Ogden, Co-Chair

Handwritten signature of Ken Armbrister in black ink, written over a horizontal line.

Ken Armbrister

Gonzalo Barrientos

Handwritten signature of Chris Harris in black ink, written over a horizontal line.

Chris Harris

Handwritten signature of John Whitmire in black ink, written over a horizontal line.

John Whitmire

Handwritten signature of Rob Junell in black ink, written over a horizontal line.

Rob Junell, Co-Chair

Handwritten signature of Helen Giddings in black ink, written over a horizontal line.

Helen Giddings

Handwritten signature of Jim McReynolds in black ink, written over a horizontal line.

Jim McReynolds

Handwritten signature of Senfonia Thompson in black ink, written over a horizontal line.

Senfonia Thompson

Handwritten signature of Irma Rangel in black ink, written over a horizontal line.

Irma Rangel

cc: The Honorable Rick Perry, Governor of Texas

Texas House of Representatives



IRMA RANGEL
P.O. Box 2910
Austin, Texas 78768-2910
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To: The Honorable Rob Junell, Co-Chair
The Honorable Steve Ogden, Co-Chair
Joint Interim Committee on Higher Education
Excellence Funding

From: Representative Irma Rangel

Date: Friday, November 22, 2002

Subject: Evaluation of Joint Interim Committee on Higher Education Funding Report to
78th Legislature

Dear Chairman Junell & Chairman Ogden:

Thank you for the opportunity to address our fellow committee members, along with our colleagues in the House and Senate, regarding recommendations to the 78th Legislature. Although I will gladly lend my signature of approval to the Joint Interim Committee on Higher Education Funding Report, I cannot fully support a few of the recommendations. Please include my dissenting opinion for your consideration.

Recommendation Two, Section 2.1: *The legislature should deregulate tuition for all courses taught at general academics during the summer and other break periods.*

Tuition deregulation is a contentious issue. Although our public institutions of higher education are in need of additional funds, I cannot support enabling boards of regents to set tuition rates, even if only during summer and other break periods. As legislators, we are charged with heeding to the needs of all our constituents, including economically disadvantaged students. I am not confident that an appointed regent will be in the position to maintain the sensitivity and compassion that legislators are elected to provide to less wealthy students.

Recommendation Two, Section 2.3: *The legislature should reevaluate the out-of-state tuition waivers currently offered to non-residents and strictly limit their availability.*

I agree that the majority of tuition waivers afforded to nonresident students should be reconsidered. However, I strongly disagree with any measure that will do away with tuition waivers for Mexican citizens pursuing a higher education in Texas. The primary legislative intent behind tuition waivers for Mexican citizens is economic development and better international relations between Texas and Mexico. Tuition waivers for Mexican citizens create jobs, increase

Chairman Rob Junell
Chairman Steve Ogden
November 22, 2002
page two

productivity and exports, and encourage economic growth and public revenues for Texas. It is critical that Mexican citizens have the opportunity to pursue higher learning in the United States rather than communist countries such as Cuba. To displace these students would be a step backward in our efforts toward encouraging the democratic principles that make our nation so great.

Thank you for all you have done and will continue to do for our bright Texas students. I have truly enjoyed having the opportunity to serve with both of you and look forward to a productive 78th Legislative Session.

Sincerely,


Irma Rangel



The Senate of The State of Texas

GONZALO BARRIENTOS
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November 19, 2002

Honorable Steve Ogden
State Senator, District 5
Co-Chair, Joint Interim Committee on Higher Education Excellence Funding
Capitol, Room 3S.3

Honorable Rob Junell
State Representative, District 72
Co-Chair, Joint Interim Committee on Higher Education Excellence Funding
Capitol, Room E1.504

Gentlemen:

I regret that I cannot endorse all of the recommendations contained in the draft report of the Joint Interim Committee on Higher Education Excellence Funding.

Specifically, my concerns are as follows:

- Recommendation 2.3 supports strict limitation by the legislature of out-of-state tuition waivers. While the goal of maximizing the tuition revenue captured by our state universities from non-residents is certainly worthwhile, I think the legislature will discover that Texas schools are using those waivers to attract high-caliber students in specific fields such as electrical engineering. The legislature should be sure about the utility of current uses of out-of-state tuition waivers before enacting any "strict" limitations.
- Recommendation 2.5 proposes that the legislature sunset statutory authority for institutions of higher education to charge revenue-producing tuition and fees outside of the appropriations process. I do believe that our universities' authority with respect to fees should be clarified and consolidated to the extent possible. However, I also believe that simply abolishing their authority to charge such fees, even when balanced against the suggestion of increased state assistance, will tie our schools' hands by limiting their flexibility in a tight budget session in which increased state funding is far from assured.
- Recommendation 5.1 suggests the elimination of Texas Public Educational Grants (TPEGs) and the transfer of tuition set aside for TPEGs to the TEXAS Grants program. Again, I do favor what I believe to be the underlying goal of this recommendation - simplifying the financial aid process for both applicants and administrators - but I cannot support this



specific proposal, as I believe it would have an adverse impact on middle-class students. This is also an issue of flexibility. At UT-Austin, for example, financial aid administrators use TPEG grants to bridge the gap in the amount of tuition covered by TEXAS Grants and the full cost of tuition at that school. Taking that option away from the school would limit its accessibility to otherwise qualified students.

- Recommendation 7 directs the legislature to require general academic institutions to publish certain information, including information about the success of graduates. Because the success of every school depends in large part on attracting good students, I believe this information is already being prepared and made available by Texas institutions of higher education. It's in their best interest to do so. Requiring this by statute has the potential to become an unnecessary burden and might yield duplication while stifling creativity in the dissemination of such information.

In closing, let me thank you both for your hard work this past interim in guiding this committee as it handled difficult charges. Again, I regret that I am unable to agree with all of the recommendations, but I hope my reasons are clear.

Sincerely,

A handwritten signature in black ink that reads "Gonzalo Barrientos". The signature is written in a cursive, flowing style with a large initial 'G'.

Gonzalo Barrientos
State Senator

GB/gk

TABLE OF CONTENTS

Executive Summary	1
Summary of Recommendations for the 78th Legislature	1
Procedural Background	3
Introduction	5
Formula Funding	6
Coordinating Board Formula Recommendations	7
Non-Formula Funding	10
Research and Excellence Funding (HB 1839)	11
AUF Excellence Funding	13
Higher Education Fund and Higher Education Assistance Fund	15
Texas Commitment - OCR Priority Plan	16
Tuition and Fees	17
Recommendations	21
Appendix A: Joint Committee Charge	
Appendix B: House Bill 1839	
Appendix C: Joint Committee Hearing Schedules	
Appendix D: Special Provisions Relating Only to State Agencies of Higher Education	
Appendix E: Formula Advisory Committee Members	
Appendix F: Higher Education Coordinating Board Formula Funding Recommendations	
Appendix G: House Bill 1839 Allocations Compared to Research Expenditures	
Appendix H: Permanent University Fund and Higher Education Assistance Fund	
Appendix I: Spring 2002 Semester Cost Project	
Appendix J: Tuition Rate for Non-resident Students for Academic Year 2002-2003	

EXECUTIVE SUMMARY

The legislature appropriated \$114.1 billion in all funds to state agencies and institutions of higher education for the 2002-03 biennium. Education and Health and Human Services continue to receive the bulk of the state's financial resources accounting for 74% of the all funds state budget. Higher education accounted for \$15.7 billion in all funds of which \$10.7 billion was appropriated from general revenue funds.

This report addresses the various funding mechanisms for general academic institutions as well as the complexity surrounding tuition and fees. Finally, the report provides recommendations to be considered by the 78th Legislature.

Summary of Recommendations for the 78th Legislature

1. The legislature should make changes to the current system of formula funding.
2. The legislature should make changes to the current tuition and fee structures.
3. The legislature should restructure certain non-formula funds and research/excellence funding currently provided under HB 1839 (77R) with the goal of greater equity and simplicity.
4. The legislature should pass a constitutional amendment to allow state appropriations to the HEAF after the HEF balance reaches \$2 billion.
5. The legislature should consolidate financial aid available to Texas students.
6. The legislature should send a clear signal through formula appropriations of the primary importance of undergraduate education in the state's institutions of higher education.
7. The legislature should require general academic institutions to uniformly publish information that will assist prospective students in choosing institutions based on cost, areas of excellence, and success of graduates.
8. The legislature should use funding mechanisms to encourage preferential acceptance of Texas

residents who graduate from Texas universities and apply to Texas public graduate and professional schools.

9. The legislature should make a concerted effort to de-politicize higher education funding and work to improve the system for the benefit of all Texans.

PROCEDURAL BACKGROUND

The Joint Interim Committee on Higher Education Excellence Funding (the committee) mandated by HB 1839 (77R) was charged as follows:

The committee shall implement the provisions of Section 5, HB 1839, 77th Legislature, and make recommendations regarding the structure and requirements for use of higher education excellence funding in Texas. The committee shall also review current higher education funding formulas and the Texas Higher Education Coordinating Board's procedures and recommendations regarding current formulas. The committee's report shall recommend ways to enhance the use of formula funding, including recommendations for implementation of a single excellence fund.¹

Section 5, HB 1839, 77th Legislature, provides, in part:

The committee shall conduct a study to (i) examine the feasibility of creating a single research enhancement fund to provide funding for institutions of higher education that have a proven research history, (ii) examine how institutions have historically utilized "excellence funds," and (iii) consider whether a portion of the annual distribution from the permanent university fund to the available university fund appropriated to The University of Texas System under Section 18(f), Article VII, Texas Constitution, should be appropriated or made available for appropriation for the support and maintenance of institutions of higher education in The University of Texas System other than The University of Texas at Austin. The committee shall consider the institutions or types of institutions that should be eligible to receive a portion, if any, of that appropriation to The University of Texas System, the methods by which any amount should be allocated among those institutions, and the purposes for which that amount should be used in the best interests of this state and The University of Texas System. The lieutenant governor and speaker may direct the committee to consider other matters related to the committee's charge under this subsection ... The committee shall conduct any study or inquiry and make any findings or recommendations the committee considers appropriate regarding the matters within the committee's charge.²

¹See Appendix A.

²See Appendix B.

The committee met in public hearings in Austin, Texas in 2002 on February 21, March 27, April 25 and May 22.³ The committee considered testimony and other information provided by Lt. Gov. Bill Ratliff, the Legislative Budget Board, the Texas Higher Education Coordinating Board, and the state public university systems and general academic institutions of higher education. The committee solicited public testimony, however none was provided.

The committee extends its thanks to those who participated in the hearings and assisted with or made presentations before the committee.

³See Appendix C.

INTRODUCTION

Higher education is one of the most important uses of appropriated funds. It is also one of the greatest uses. The state appropriated \$ 15.7 billion, 14 percent of the entire state budget, to higher education for the fiscal year (FY) 2002-2003 biennium (current biennium).⁴ That includes \$10.7 billion in general revenue, which is 17 percent of the total general revenue appropriated by the legislature for the current biennium.⁵

In addition, colleges and universities receive a substantial amount of funding from other sources. Those additional funds do not flow through the appropriations process and historically have not specifically been quantified or considered when the legislature has made its funding decisions.

Higher education funding is highly complex and somewhat unpredictable. It involves appropriations made primarily through formulas, but also through substantial non-formula mechanisms which are often more subjective and more complicated.

⁴Legislative Budget Board, Fiscal Size-Up, Texas State Services (2002-03), at 2.

⁵*Id.* at 5.

FORMULA FUNDING

Two formulas are used in funding general academics. The Instruction and Operations Formula (I&O) provides funding for faculty salaries, including nursing, departmental operating expenses, library, instructional administration, research enhancement, student services and institutional support.⁶ I&O funds are distributed on a weighted semester credit hour (WSCH) basis and the rate per WSCH is currently \$56.65.⁷ Course weights vary by type and level and are determined by a matrix.⁸ In addition, for the current biennium, a weight of 10 percent is added to lower division and upper division semester credit hours taught by tenured and tenure-track faculty and the legislature has expressed its intent that the weight be increased by 10 percent per biennium, up to 50 percent.⁹

The second formula is for infrastructure support. It utilizes predicted square feet for universities' educational and general activities in the Space Projection Model developed by the Texas Higher Education Coordinating Board (Coordinating Board).¹⁰ The portion of the infrastructure formula related to utilities is adjusted to reflect differences in unit costs for purchased utilities.¹¹ The average rate is currently \$7.36 per square foot.¹²

⁶See Appendix D (General Appropriations Act, 77th Leg., R.S. (SB 1), at III-239).

⁷*Id.*

⁸*Id.*

⁹*Id.*

¹⁰General Appropriations Act, 77th Leg., R.S. (SB 1), at III-240.

¹¹*Id.*

¹²*Id.*

For the current biennium, general academics received appropriations of \$6.2 billion.¹³ \$3.6 billion is formula funded and \$2.6 billion represents non-formula funds.¹⁴ The 77th Legislature included in the formula funds \$23 million in “hold harmless” funding to institutions which would have received less formula funding during the current biennium than they did in the previous biennium.¹⁵ Decreases in formula funding to an institution may be the result of factors such as declining enrollment, shifts from upper level hours to lower level hours, a significantly smaller increase in enrollment than that of other institutions or changes in utility costs.¹⁶

Coordinating Board Formula Recommendations

The Coordinating Board is authorized by the legislature to review funding formulas and to make recommendations regarding them.¹⁷ During the current interim, Don Brown, Commissioner of Higher Education, appointed a formula advisory committee comprised of faculty and administrators from state public institutions of higher education and public

¹³Legislative Budget Board, State Funding for General Academic Institutions of Higher Education (February 2002), presentation to Joint Interim Committee on Higher Education Excellence Funding, at 1, http://www.lbb.state.tx.us/Higher_Education/HigherEd_StateFunding_0202.pdf. This amount does not include general academics’ portion of an additional \$1 billion for all of higher education in the form of retirement contributions for higher education employees and Coordinating Board-Trusteed Funds (primarily for student financial aid).

¹⁴*Id.*

¹⁵*Id.* at 9.

¹⁶*Id.*

¹⁷TEX. EDUC. CODE ANN. § 61.059(b) (Vernon Supp. 2002).

members.¹⁸ Two associated study committees also assisted the Coordinating Board with a review of the formulas.

The committees held a number of public meetings and made recommendations to the Coordinating Board. After considering the committees' recommendations and those of the Commissioner, the Coordinating Board made its recommendations to the governor and the legislature on April 18, 2002.¹⁹

The Coordinating Board recommended a 15.5 percent, or \$554 million, increase over current formula and non-formula appropriations to the general academic institutions.²⁰ The report also includes recommendations for a 25.2 percent increase to community and technical colleges and a 9.4 percent increase to health-related institutions.²¹

Commissioner Brown made the Coordinating Board's presentation on formula and excellence funding to the committee on May 22, 2002. He explained how funding formulas are structured and the process for developing the formulas. He further described the major recommendations of the Formula Advisory Committee and of the Coordinating Board with respect to community and technical colleges, general academic institutions and health-related institutions.

¹⁸*See* Appendix E.

¹⁹Texas Higher Education Coordinating Board, Formula Funding Recommendations for the 2004-2005 Biennium (April 18, 2002), <http://www.thecb.state.tx.us/reports/pdf/0461.pdf>.

²⁰*Id.* *See* Appendix F.

²¹*Id.* *See* Appendix F.

In addition, Commissioner Brown presented testimony regarding the statewide higher education plan, "Closing the Gaps," with respect to closing the gaps in excellence by substantially increasing the number of nationally recognized programs or services at colleges and universities in Texas by 2015.²² The commissioner also pointed out that formulas should be equitable and developed to best support the goals of Closing the Gaps; that the overall level of formula funding should be adequate to promote achievement of Closing the Gaps; and that non-formula appropriations, such as excellence and research funds, should be structured to support Closing the Gaps.²³

²²Texas Higher Education Coordinating Board, Closing the Gaps, The Texas Higher Education Plan, <http://www.thecb.state.tx.us/AdvisoryCommittees/HEP/HEplanFinal.pdf>.

²³Texas Higher Education Coordinating Board, Presentation on Funding Formulas and Excellence Funding, Presentation to Joint Interim Committee on Higher Education Excellence Funding (May 22, 2002), at 17.

NON-FORMULA FUNDING

In addition to substantial formula funds, institutions receive appropriated funds from various “pots” with various allocation schemes. For the current biennium, these non-formula funds include \$253 million in institutional enhancement, \$91 million in capital equity and excellence, \$258 million in special items and \$68 million in excellence and university research funds (HB 1839).²⁴

General academics also receive an additional \$988 million in other non-formula funds that pay for costs such as staff group insurance, workers’ and unemployment compensation, indirect cost recovery, Texas Public Education Grants, and Tuition Revenue Bonds.²⁵ In addition, Prairie View A&M University and Texas Southern University share \$50 million to implement their Office of Civil Rights-Priority Plan components.²⁶ Finally, general academics receive \$579 million from the Available University Fund (AUF) and \$312 million from the Higher Education Assistance Fund (HEAF), both of which are provided for in the Texas Constitution.²⁷

Dealing with all of these different pots of funds and how they are appropriated greatly increases the complexity of higher education funding and difficulty in achieving the most equitable funding possible with the least interference by political factors. The problems encountered with the evolution and passage of HB 1839 is a perfect example of these difficulties.

²⁴Legislative Budget Board, *supra* note 13, at 1.

²⁵*Id.*; General Appropriations Act, 77th Leg., R.S. (SB 1), at III-240.

²⁶General Appropriations Act, 77th Leg., R.S. (SB1), at III-97-98, III-132.

²⁷Legislative Budget Board, *supra* note 13, at 13.

Further, the use of non-formula appropriations limits predictability in funding and creates expectations which may not be tenable in future biennia.

Research and Excellence Funding (HB 1839)

The 77th Legislature passed HB 1839 designed to provide research and excellence funding to certain general academics.²⁸ It established two separate funds: the Texas Excellence Fund (TEF) for HEAF institutions and the University Research Fund (URF) for PUF institutions. Each fund was appropriated \$33.7 million for the biennium.²⁹ TEF funding is offset by a reduction in the annual appropriation to the constitutionally-protected Higher Education Fund (HEF) by the amount of interest earned by the HEF in the previous year, while the URF is funded with general revenue.³⁰ Another distinction between the funds is that the TEF's \$33.7 million is divided among 21 institutions, while the URF's \$33.7 million is divided among eight institutions.³¹ Finally, qualification for and allocation of funds within the TEF and the URF differ substantially.

The TEF is available to each HEAF “eligible comprehensive research university,” defined as those awarding 45 PhDs per year in certain restricted fields and having \$15 million per year in

²⁸TEX. EDUC. CODE ANN. §§ 62.051-57, 62.071-77 (Vernon Supp. 2002).

²⁹S.B. No. 1, Acts of the 77th Legislature, Regular Session, 2001.

³⁰TEX. EDUC. CODE ANN. § 62.025 (Vernon Supp. 2002); S.B. No. 1, Acts of the 77th Legislature, Regular Session, 2001.

³¹Legislative Budget Board, *supra* note 13, at 15.

restricted research expenditures.³² For the current biennium, “eligible comprehensive research universities” include The University of Houston, Texas Tech University and The University of North Texas.³³ These institutions share 80 percent of the TEF according to each eligible institution’s share of research expenditures.³⁴ The remaining 20 percent (\$6.7 million) is distributed to 18 other HEAF institutions based on their shares of research expenditures.³⁵

The URF, on the other hand, is distributed among three groups of PUF institutions and excludes Texas A&M University, Prairie View A&M University and The University of Texas at Austin.³⁶ URF criteria for an “eligible doctoral and research university” include the award of 50 PhDs per year in *any* field and \$5 million per year in restricted research expenditures.³⁷ For the current biennium, the only “eligible doctoral and research universities” are The University of Texas at Arlington and The University of Texas at Dallas. Funds are allocated half based on share of research and half on share of degrees awarded.³⁸ PUF “emerging doctoral and research universities” are those awarding one PhD for each of two years and expending \$5 million in restricted research each of three years.³⁹ For the current biennium, the only “emerging doctoral

³²TEX. EDUC. CODE ANN. § 62.055 (Vernon Supp. 2002).

³³*Id.*

³⁴*Id.*

³⁵*Id.* The University of Houston - Victoria and Texas A&M University - Texarkana do not receive TEF appropriations.

³⁶TEX. EDUC. CODE ANN. § 62.072 (Vernon Supp. 2002).

³⁷*Id.*

³⁸TEX. EDUC. CODE ANN. §§ 62.075, 62.0751 (Vernon Supp. 2002).

³⁹TEX. EDUC. CODE ANN. § 62.072 (Vernon Supp. 2002).

and research universities” are The University of Texas at El Paso and The University of Texas at San Antonio. Allocations are made in the same manner as for “eligible doctoral and research universities.”⁴⁰ Other PUF institutions which do not meet the criteria for either of the above classifications share \$1 million per year.⁴¹ The University of Texas of the Permian Basin, The University of Texas at Tyler, Texas A&M University at Galveston and Tarleton State University each received approximately \$250,000 in each year of the current biennium.

On average, funding per dollar of restricted research expenditures is 71 percent greater for URF than TEF.⁴² The resulting sense of inequity has become one of significant concern among universities. It is underscored by the establishment of separate funds with different criteria and inconsistent allocation mechanisms.

AUF Excellence Funding

The Texas Constitution provides for “excellence” funding at The University of Texas at Austin, Texas A&M University and Prairie View A&M University.⁴³ In addition, it allows for debt service on PUF bonds to benefit The Texas A&M University System, The University of Texas System and their respective component institutions, and for the support and maintenance

⁴⁰TEX. EDUC. CODE ANN. §§ 62.075 , 62.0751(Vernon Supp. 2002).

⁴¹*Id.*

⁴²*See* Appendix G.

⁴³Tex. Const. art. VII § 18.

of systems' administrations.⁴⁴ The respective systems' boards of regents determine the allocations of their debt service funds among their institutions and agencies.

The adoption of a constitutional amendment, known as "Proposition 17," in 1999 has resulted in increased distributions from the PUF to the AUF, and in turn, to the eligible institutions. Proposition 17 allows distributions from the PUF to the AUF based on the total return on all investment assets of the PUF.⁴⁵ Following application of Proposition 17, PUF investment distributions increased by 13 percent from FY 1999 to FY 2000.⁴⁶ For the current biennium, the University of Texas at Austin received \$222 million in excellence funds from the AUF and Texas A&M University received \$138 million.⁴⁷

For AUF purposes, "excellence" is an undefined term and the corresponding funds are used for a wide range of expenditures by eligible institutions. For example, excellence funds have been used for library support and acquisitions, research and salary enhancements, scholarships and fellowships, employee benefits and public service projects.⁴⁸

⁴⁴*Id.* See Appendix H for listing of institutions for which debt service may be paid from the Available University Fund.

⁴⁵*Id.*

⁴⁶Source: Legislative Budget Board.

⁴⁷Texas A&M University, Report to Joint Interim Committee on Higher Education Excellence Funding (February 21, 2002); The University of Texas at Austin, Report to Joint Interim Committee on Higher Education Excellence Funding (February 28, 2002).

⁴⁸*Id.*

Higher Education Fund and Higher Education Assistance Fund

The institutions which are not PUF eligible receive funding from appropriations made through the Higher Education Assistance Fund (HEAF).⁴⁹ These funds may be used to acquire land; construct, repair and rehabilitate buildings; and purchase capital equipment and library materials.⁵⁰ Since 1996, the annual HEAF appropriation has been \$175 million per year.

In addition, a constitutional amendment provided for the creation of the Higher Education Fund (HEF).⁵¹ The HEF is a permanent endowment with investment income which must be returned to the HEF until the fund balance reaches \$2 billion.⁵² The HEF received \$50 million annually from 1996, when it was created, until 2001 when HB 1839 became law. Beginning in FY 2002, the annual HEF-endowment appropriation was reduced by about \$16 million (the estimated amount of interest earned by the HEF) and the same amount was transferred to the TEF created by HB 1839. The Texas Constitution currently states that, when the HEF balance reaches \$2 billion, annual appropriations to the HEAF will cease, 10 percent of investment income will be returned to the HEF and the remainder of HEF investment income will then be appropriated to HEAF-eligible institutions.⁵³

⁴⁹Tex. Const. art. VII § 17. *See* Appendix H for a listing of HEAF-eligible institutions.

⁵⁰*Id.*

⁵¹Tex. Const. art VII § 17(I).

⁵²*Id.*

⁵³*Id.*

Texas Commitment - OCR Priority Plan

Significant funds were also appropriated by the 77th Legislature to Prairie View A&M University (PVAMU) and Texas Southern University (TSU). PVAMU and TSU received \$25 million per university for the biennium for implementation of the federal Office of Civil Rights (OCR) Priority Plan.⁵⁴ The OCR Priority Plan was developed to address concerns of the OCR following a two-year review of public higher education in Texas with respect to the elimination of vestiges of segregation.⁵⁵ PVAMU and TSU report biannually to the Governor, the Legislative Budget Board and the Coordinating Board regarding their progress on each component of the Priority Plan.

⁵⁴General Appropriations Act, 77th Leg., R.S. (SB1), at III-97-98, III-132.

⁵⁵Texas Higher Education Coordinating Board, Priority Plan to Strengthen Education at Prairie View A&M University and at Texas Southern University (October 2002), <http://www.theccb.state.tx.us/reports/PDF/0313.pdf>.

TUITION AND FEES

An historic priority for Texas higher education is affordability. According to the Legislative Budget Board, the average cost of resident tuition and fees for full-time students at Texas public universities has increased from \$1,208 in 1991-92 to \$2,765 in 2001-02. Still, an education at a public institution in Texas is a relative bargain, though tuition and fees vary by institution and course of study.⁵⁶ The average tuition and fees charged by four-year public institutions of higher education in the United States was \$3,754 in 2001-02.⁵⁷ The average charges for four-year private institutions was \$17,123.⁵⁸

Nonetheless, tuition and fees charged by institutions have become another complicating and contentious factor in higher education finance. Statutory provisions regarding authority granted to the institutions in setting certain fees has been a source of confusion and debate. In fact, in the last several months, two major universities had very different experiences when their respective boards of regents approved the creation of new fees under different statutory provisions. In addition, the legislature does not have a clear policy regarding the portion of the cost of higher education that should be borne by students.

The University of Texas at Austin intended to charge a new “infrastructure fee” to help cover costs associated with deferred maintenance and renovation of buildings on campus beginning with the Fall 2002 semester. However, an attorney general opinion issued on July 9, 2002, resulted in the university’s decision not to charge the fee. The summary provided in the

⁵⁶See Appendix I.

⁵⁷The College Board, Trends in College Pricing 2001.

⁵⁸*Id.*

opinion illustrates the difficulty involved in sorting through the statutory authority relating to fees.

Section 55.16 of the Education Code authorizes the governing board of an institution of higher education to collect charges from students for the occupancy, services, use, and/or availability of all or any of its property, buildings, structures, and activities, subject to limits found in other Education Code provisions. Section 54.0513 of the Education Code establishes the maximum amount that may be charged for the purposes of the former "building use fee" and thus limits the amount that the University of Texas System Board of Regents may collect under Education Code section 55.16(a) for this purpose. Any charge imposed under section 55.16(a) for the same purposes as the former "building use fee," when combined with the charge imposed under section 54.0513, cannot exceed the maximum amount authorized by 54.0513. To the extent that the "infrastructure charge" is the equivalent of the former "building use fee" it would be subject at least in part to the limit in Education Code section 54.0513.⁵⁹

In contrast, Texas A&M University is charging entering freshmen new and higher fees. These fees are authorized under a different section in the Texas Education Code and differ from the section cited by The University of Texas at Austin. In addition, Texas A&M University's fees were not challenged on legal grounds.

There are 71 separate sections under the subchapter heading "Other Fees and Deposits" in the Texas Education Code.⁶⁰ Most fees are not included in the appropriations process.

According to the State Auditor's Office, data provided by general academics in their Annual Financial Reports for FY 2001 reflects that tuition and fees outside the appropriations process amount to an additional \$837 million in funding.

⁵⁹Tex. Atty. Gen. Op. No. JC-0527 (2002).

⁶⁰TEX. EDUC. CODE ANN. §§ 54.501-54.546 (Vernon1996 & Supp. 2002).

Public institutions are authorized to charge “statutory tuition” subject to a cap set by the legislature, as well as what is referred to as “designated tuition.” Statutory tuition is the charge per hour students pay for classes. The maximum statutory tuition for “resident” or in-state students for the 2002-2003 year is \$44 per semester credit hour.⁶¹ Non-resident or out-of-state students are charged a higher rate computed by the Coordinating Board based on non-resident tuition charged to Texas residents at public universities in the five most populous states other than Texas.⁶² The current non-resident statutory tuition rate is \$262 per semester credit hour.⁶³ However, numerous categories of students who are not Texas residents, as defined by the Texas Education Code, may be charged the same tuition rates as Texas residents.⁶⁴ According to the Coordinating Board, waiver status for more than 10 percent of students at public universities, or 30,514 non-residents, in FY 2001 may have cost as much as \$120 million in funding.

A percentage of statutory tuition is set aside by each institution of higher education to provide Texas Public Education Grants (TPEGs). The set aside is 15 percent of a resident student’s tuition charge and three percent of each nonresident student’s tuition charge.⁶⁵ The various governing boards of institutions establish their own guidelines for determining eligibility

⁶¹TEX. EDUC. CODE ANN. § 54.0512 (Vernon 1996).

⁶²TEX. EDUC. CODE ANN. § 54.051 (Vernon 1996).

⁶³See Appendix J.

⁶⁴TEX. EDUC. CODE ANN. §§ 54.052-54.0601 (Vernon 1996 & Supp. 2002). See Texas Higher Education Coordinating Board, Rules and Regulations - Residence Status (Fall 2001), [http:// www.collegefortexans.com/library/pdf/006.pdf](http://www.collegefortexans.com/library/pdf/006.pdf).

⁶⁵TEX. EDUC. CODE ANN. § 56.033 (Vernon Supp. 2002); S.B. No. 1, Acts of the 77th Legislature, Regular Session, 2001, at III-55.

for TPEGs and financial need is to be the only consideration in that regard.⁶⁶ For the current biennium, \$130 million was appropriated for TPEGs.⁶⁷

Designated tuition is a charge which was formerly called a “building use fee” but was redesignated by the legislature as tuition to be retained by the institutions.⁶⁸ Designated tuition cannot exceed the maximum statutory tuition authorized and it is not to be counted against the institutions to reduce their general revenue appropriations, nor is it included in the appropriations process.⁶⁹

⁶⁶TEX. EDUC. CODE ANN. § 56.034 (Vernon 1996).

⁶⁷Legislative Budget Board, *supra* note 13, at 18.

⁶⁸TEX. EDUC. CODE ANN. § 54.0513 (Vernon Supp. 2002).

⁶⁹*Id.*

RECOMMENDATIONS

The committee recommends that the 78th Legislature consider taking appropriate action to effectuate the following changes in regard to its funding of state general academic institutions.

1. The legislature should make changes to the current system of formula funding.
 - 1.1 The legislature should direct the Coordinating Board to develop for consideration by the legislature separate funding formulas for general academic institutions based in part on their Carnegie classifications or other objective measures and the legislature should set as a goal to fully fund the formulas and encourage institutions to work to move into different classifications as they and their boards of regents see fit.
 - 1.2 The legislature should adjust state funding formulas to increase state assistance to general academic institutions during the fall and spring semesters and reduce the cost to students of obtaining a degree.

2. The legislature should make changes to the current tuition and fee structures.
 - 2.1 The legislature should deregulate tuition for all courses taught at general academics during the summer and other break periods.
 - 2.2 The legislature should deregulate tuition amounts charged to non-Texas residents and reduce the taxpayer subsidy for non-resident students. Discretion in setting tuition above a minimum authorized by the legislature in these situations should lie solely with the individual boards of regents.

- 2.3 The legislature should reevaluate the out-of-state tuition waivers currently offered to non-residents and strictly limit their availability.
 - 2.4 The legislature should establish a limit on the portion of the cost of public higher education which is borne by resident students.
 - 2.5 The legislature should sunset the current statutory provisions providing institutions of higher education with authority to charge revenue-producing tuition and fees outside of the state's budgetary framework and simplify and clarify the non-appropriated tuition and fee system.
3. Once the formulas are fully funded, the legislature should restructure certain non-formula funds and research/excellence funding currently provided under HB 1839 (77R) with the goal of greater equity and simplicity. Funding for research/excellence should come from one fund and be based on meaningful criteria and verifiable data. These funds should be available to institutions as matching funds to draw down federal, corporate or private funds. For institutions which do not have programs or positions designed to assist faculty and staff in seeking and obtaining non-state funding, the state should provide funds to establish such programs or positions.

These matching programs could cover the entire range of endeavors at our colleges and universities provided there are *bona fide* matches and the programs further the stated missions of the institutions, including enhancing the quality of student instruction, attracting and retaining more high-quality faculty, leveraging external support and increasing technology transfer to the private sector. The goal of the funding should continue to be the support and maintenance of

educational and general activities, including research and student services, that promote research capacity and develop institutional excellence at the institution.

3.1 Because the current HB 1839 method of finance shortchanges the constitutionally-protected HEF, research/excellence should be funded without reducing the state's annual contribution to the endowment.

4. The legislature should pass a constitutional amendment to allow state appropriations to the HEAF after the HEF balance reaches \$2 billion.

5. The legislature should consolidate financial aid available to Texas students.

5.1 The legislature should eliminate duplication of state scholarship sources such as Texas Public Educational Grants (TPEGs), which cost \$130 million during the current biennium. The tuition set aside for TPEGs should be consolidated and administered uniformly through statewide programs such as TEXAS Grants.

5.2 The legislature should encourage students who need but are not eligible for TEXAS Grants to apply for TEXAS Grants II and, after obtaining their associates degrees, reapply for TEXAS Grants at general academic institutions.

5.3 The legislature should adequately fund TEXAS Grants and improve the administration of them so that every Texan who is qualified and motivated will have the opportunity to attend college.

6. The legislature should send a clear signal through formula appropriations of the primary importance of undergraduate education at the state's institutions of higher education. To that end, higher education funding should encourage and reward outstanding undergraduate programs and the teaching of undergraduate courses by the most capable faculty members.

6.1 The legislature should increase the teaching experience supplement which provides additional weight to the formula for hours taught by tenured or tenure-track faculty.

6.2 The legislature should establish better performance measures for evaluating undergraduate programs.

7. The legislature should require general academic institutions to uniformly publish information that will assist prospective students in choosing institutions based on cost, areas of excellence, and success of graduates.

8. The legislature should use funding mechanisms to encourage preferential acceptance of Texas residents who graduate from Texas universities and apply to Texas public graduate and professional schools.

9. The legislature should make a concerted effort to de-politicize higher education funding and work to improve the system for the benefit of all Texans. In the long run, this will require a rational reorganization of higher education governance, greater focus on a defined mission of each institution, and full funding of formulas that are adequate and fair.